

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JARRETT BANYAN,

Plaintiff,

vs

9:05-CV-500

GREGORY EASTWOOD, Director, SUNY Upstate
Medical University Hospital; and ESTATE OF DR.
JOHN HALVERSON, M.D.,

Defendants.

APPEARANCES:

JARRETT BANYAN
03-A-2859
Midstate Correctional Facility
P.O. Box 2500
Marcy, NY 13403

HON. ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
Suite 102
615 Erie Boulevard West
Syracuse, New York 13204-2455

DAVID N. HURD
United States District Judge

OF COUNSEL:

SENTA B. SIUDA, ESQ.
Asst. Attorney General

DECISION and ORDER

Plaintiff, Jarrett Banyan, brought this civil rights action pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated March 31, 2006, the Honorable David E. Peebles, United States Magistrate Judge, recommended that the motion of defendant Gregory Eastwood seeking dismissal of plaintiff's complaint, as amended, be dismissed as against

that defendant, with leave to replead. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of Magistrate Judge Peebles, the Report-Recommendation is accepted and adopted except that the complaint shall be dismissed against defendant Eastwood, with prejudice. See 28 U.S.C. 636(b)(1). It is also noted that the complaint was filed on April 22, 2005, and the defendant Estate of Dr. John Halverson, M.D. has never been served. Therefore, the complaint will be dismissed as against him as well.

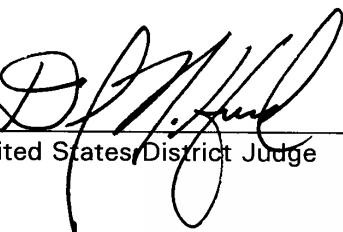
Accordingly, it is

ORDERED that

1. The motion of defendant Gregory Eastwood is GRANTED and the complaint is DISMISSED, with prejudice, as against defendant Eastwood;
2. The complaint is DISMISSED as against defendant Dr. Halverson; and
3. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

Dated: May 5, 2006
Utica, New York.



United States District Judge